

BACKGROUND PAPER FOR HEARING

November 17, 2005

PROPOSAL FOR THE REGULATION OF PROFESSIONAL COUNSELORS

JOINT COMMITTEE ON BOARDS, COMMISSIONS, AND CONSUMER PROTECTION

Senator Liz Figueroa, Chair

SUBJECT: SHOULD CALIFORNIA ESTABLISH A LICENSING PROGRAM FOR PROFESSIONAL COUNSELORS?

SUMMARY: Consideration of the issues and facts regarding the need for the establishment of professional counselor regulation in California.

EXISTING STATE LAW:

- 1) Authorizes the Board of Behavioral Sciences (Board) within the Department of Consumer Affairs to license and regulate the practice of psychotherapy preformed by educational psychologists, social workers, and marriage and family therapists.
- 2) Defines a psychotherapist as a physician and surgeon specializing in psychiatry or practicing psychotherapy, a psychologist, a clinical social worker, a marriage and family therapist, a psychological assistant, a marriage and family therapist registered intern or trainee, or an associate clinical social worker.
- 3) Establishes the following general requirements for licensure of psychotherapists:
 - a) A graduate degree from an accredited school in a related clinical field.
 - b) Extensive hours of supervised experience gained over two years.

- c) Registration with the regulatory Board while gaining the supervised experience.
 - d) Standard and Clinical Vignette licensing examinations.
- 4) Defines the practice of marriage and family therapy as service preformed with individuals, couples, or groups wherein interpersonal relationships are examined for the purpose of achieving more adequate, satisfying, and productive marriage and family adjustments.
- 5) Defines the practice of clinical social work as service in which a special knowledge of social resources, human capabilities, and the part that unconscious motivation plays in determining behavior, and service that is directed at helping people achieve more adequate, satisfying, and productive social adjustments.

BACKGROUND: AB 894 (La Suer) proposes the regulation of Licensed Professional Counselors (LPCs) by the Board, and specifies the requirements for licensure, practice, and Board operations. AB 894 is sponsored by the California Coalition for Counselor Licensure (CCCL).

QUALIFICATIONS FOR LICENSED PROFESSIONAL COUNSELORS:
Under the current proposal of AB 894, licensure as a LPC in California would require:

- 1) A master's or doctor's degree from an accredited or state approved school in counseling or a related subject, including but not limited to:
 - a) Rehabilitation counseling.
 - b) Psychology.
 - c) Art therapy.
 - d) Marriage and family therapy.
 - e) School counseling.
 - f) School psychology.
 - g) Dance or movement therapy.
 - h) Career development.
- 2) A minimum of 48 semester or 72 quarter graduate units of instruction. Effective January 1, 2012, a minimum of 60 semester or 90 quarter graduate units is required, including a 48 semester or 72 quarter unit master's degree.

- 3) The equivalent of at least three semester or four and one-half quarter units included within the 48 semester or 72 quarter units, in each of the following areas:
 - a) Helping relationships, including counseling theory and practice.
 - b) Human growth and development.
 - c) Lifestyle and career development.
 - d) Group dynamics, processes, counseling, and consulting.
 - e) Assessment and testing of individuals.
 - f) Social and cultural foundations.
 - g) Principles of diagnosis, treatment planning, and prevention of mental and emotional disorders.
 - h) Research and evaluation.
 - i) Professional ethics and law in counseling.
- 4) A minimum of six semester or nine quarter units or the equivalent of supervised practicum/fieldwork experience in a counseling setting that provides clinical or counseling experience within the scope of practice for professional counselors, consisting of:
 - a) A minimum of 150 hours of face-to-face experience counseling individuals, families, or groups. The minimum increases to 240 hours on January 1, 2012.
 - b) Applied psychotherapeutic techniques.
 - c) Assessment and diagnosis.
 - d) Prognosis and treatment.
 - e) Development, adjustment and maladjustment.
 - f) Health and wellness promotion.
 - g) Other recognized counseling interventions.

SCOPE OF PRACTICE: AB 894 defines a "Licensed Professional Counselor" as a person licensed to practice professional counseling. "Professional counseling" is defined as the application of mental health, psychological, and human development principles in order to:

- 1) Work preventively to promote development and adjustment throughout the life span.
- 2) Provide counseling interventions for mental, emotional, behavioral, or developmental issues.

- 3) Conduct assessments as a foundation for planning counseling interventions consistent with required training and coursework.
- 4) Plan, implement, and evaluate counseling interventions that help people of all functioning levels to grow mentally, emotionally, socially, educationally, and in terms of their careers.

AB 894 defines the practice of professional counseling to include:

- 1) Providing individual or group counseling using psychotherapeutic techniques.
- 2) Providing assessment as a foundation for counseling intervention planning.
- 3) Providing crisis intervention.
- 4) Providing guidance and consulting, including educational and career development.
- 5) Using functional assessment and counseling to assist in adjusting to a disability.

COMPARABILITY: Under AB 894's proposal, LPCs, like Marriage and Family Therapists (MFTs) and Licensed Clinical Social Workers (LCSWs), would be allowed to perform psychotherapy. Therefore, the majority of requirements for LPC licensure should be comparable to MFT and LCSW licensing requirements.

Education: The proposed educational requirements are comparable to MFTs, including a 48 semester or 72 quarter unit master's degree from an accredited or state-approved school.

Experience: The proposed experience requirements are comparable to MFTs, requiring 3,000 hours completed in a minimum of 104 weeks, supervised by a licensed mental health professional. A minimum of 1,750 hours of direct counseling with individuals or groups in a clinical or counseling setting is required, and 1,300 hours may be completed pre-degree.

Examination: The proposed examination requirements are comparable to MFTs and LCSWs.

Continuing Education: The proposed continuing education requirements are comparable to MFTs and LCSWs. A licensee would be required to complete 36 hours every two years.

Enforcement: The proposed enforcement components are comparable to MFTs and LCSWs, including the ability to deny, revoke, or suspend a license for specified reasons.

REGULATION IN OTHER STATES: According to materials provided by CCCL, 48 other states regulate and license LPCs. The following chart provides an overview of the licensure of mental health professionals throughout the United States.

National Statistics Mental Health Professional Licensure*

State	Professional Counselor	Marriage & Family	Clinical Social Worker	Psychologist
Alabama	15,000	220	4,084	711
Alaska	307	97	282	367
Arizona	1,848	315	2,188	1,626
Arkansas	680	232	2,200	786
California	no licensure	24,503	14,428	12,099
Colorado	2,409	486	3,063	1,970
Connecticut	1,067	644	3,488	1,289
Delaware	154	no licensure	413	351
District of Columbia	1,157		4,013	1,036
Florida	5,359	1,350	5,084	3,259
Georgia	2,179	544	3,020	1,248
Hawaii	new license 2004	70	1,084	488
Idaho	450		1,225	250
Illinois	4,722	391	11,003	3,673
Indiana	1,887	2,399	3,200	1,450
Iowa	484	184	5,149	503
Kansas	526	327	5,406	611
Kentucky	269	420	4,125	1,260
Louisiana	1,815		5,000	528
Maine	675	83	4,466	550
Maryland	1,417	126	12,000	2,300

State	Professional Counselor	Marriage & Family	Clinical Social Worker	Psychologist
Massachusetts	2,993	877	19,715	5,083
Michigan	5,192	994	14,145	2,462
Minnesota	new license 2003	700	9,800	3,700
Mississippi	656	368	3,854	300
Missouri	2,500	1,000	3,200	2,603
Montana	749		371	213
Nebraska	766	80	1,246	362
Nevada	no licensure	596	14,000	277
New Hampshire	349	50	831	615
New Jersey	1,897	798	15,120	2,762
New Mexico	4,100		3,100	550
New York	new license 2002		39,165	10,652
North Carolina	2,192	552	4,039	1,975
North Dakota	350		2,163	185
Ohio	6,000	no licensure	7,600	3,780
Oklahoma	1,950	700	1,326	527
Oregon	1,061	268	2,142	1,060
Pennsylvania	new license 1998		8,849	5,900
Rhode Island	109	70	1,365	457
South Carolina	1,471	250	4,000	531
South Dakota	408	123	665	176
Tennessee	949	261	2,700	1,233
Texas	10,000	4,500	19,000	6,814
Utah	160	379	1,685	654
Vermont	362	22	618	553
Virginia	2,495	919	4,115	2,074
Washington	3,465	822	2,543	1,579
West Virginia	1,147		4,596	699
Wisconsin	2,186	465	12,056	1,223
Wyoming	514	55	238	166

*This chart was published by the American Counseling Association in the May 2001 issue of *Counseling Today*. Laws passed since 2001 have been added to the chart.

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NEED FOR PROFESSIONAL COUNSELOR LICENSING: According to CCCL, the licensing of professional counselors would provide consumers with a wider range of therapists competent to work with diverse populations, issues, and programs, such as:

1) Gerontological Counselors

- 2) Rehabilitation Counselors
- 3) Forensic Counselors
- 4) Art/Movement Therapists
- 5) Career Counselors
- 6) Community/Mental Health Counselors

CCCL also states, “LPCs have specialties verified by degrees, coursework and certificates in areas not covered by the education and training of MFTs.” The sponsor, CCCL, believes that the difference between professional counselors and other mental health disciplines is their “orientation toward wellness” and a focus on the individual through the use of a developmental perspective as opposed to an interpersonal perspective. The education of MFTs has a focus in marital and family relationship counseling; however, MFTs are also trained generally in the diagnosis, assessment, prognosis and treatment of mental disorders, including a range of theoretical approaches. The education of LCSWs is based on a biopsychosocial approach, and can include a range of theoretical approaches.

CONSUMER PROTECTION: According to CCCL, consumers who are sophisticated and knowledgeable, are able to control risk of harm with an understanding of the licensure process, the specialty boards, and their own legal rights. However, most consumers are not aware that anyone, irrespective of education, may hold themselves out to be a “counselor.”

CCCL further explains that there is not an established legal avenue by which consumers can seek recourse for harm done by an unlicensed counselor. They contend that because there is no regulatory agency to report these unlicensed practitioners, even if they commit an illegal act, they can continue to practice in the profession because there is no license to revoke.

According to CCCL, licensure of LPCs will increase the number of mental health jobs filled by licensed professionals, which will improve regulation and clarify to consumers how to file a complaint. However, exempt settings (i.e. schools, government entities and nonprofit institutions) would remain exempt and could continue to employ unlicensed and unregistered counselors. Unlicensed providers are less expensive to employ.

WORKFORCE ISSUE: CCCL has identified a number of workforce issues that they believe licensure of LPCs would address. They cite the 2003 California Workforce Initiative report entitled *The Mental Health Workforce: Who's Meeting California Needs?* which stated that unlicensed providers are meeting much of the mental health needs of Californians, and that the problem is obtaining third-party reimbursement. CCCL also explains that there is a shortage of mental health providers in rural areas and to treat Medi-Cal beneficiaries, and this shortage could increase due to the passage of Proposition 63, which potentially will double the number of clients served. Proposition 63, passed in 2004, expanded mental health care for children and adults through a 1% tax on taxable personal income over \$1 million.

QUESTIONS:

1) Who exactly is this bill intended to regulate?

AB 894 states that "...it is the policy of the State of California that the activities of those persons who render services to the public in the counseling area *and* use the title Licensed Professional Counselor be regulated...." [Emphasis added] (Section 4989.10(d)).

In another section, AB 894 speaks to the practice and advertisement of professional counseling service, irrespective of the use of a title: "...a person shall not *practice* or advertise the performance of professional counseling services without a license issued by the board..." [Emphasis added] (Section 4989.20).

Section 4989.62(a) could be interpreted to make the rendering of all counseling service by anyone other than a LPC (exempting MFTs and LCSWs) a violation of the Licensed Professional Counselor Act: "It shall be unlawful for any person to engage in any of the following acts...engage in the *practice of counseling* without first having complied with the provisions of this chapter and without holding a valid license required by the chapter." [Emphasis added]

According to documents provided by CCCL, their definition of scope of practice is, "It will be unlawful for a person to engage in the *practice of counseling* or representing themselves as a *counselor* without holding a valid license." [Emphasis added]

Furthermore, only LPCs can practice "professional counseling," and included in the definition of the practice of "professional counseling" is educational and career development and rehabilitation counseling. Therefore it is unclear if current rehabilitation counselors will now have to become LPCs or if current rehabilitation counselors can continue without a license as long as they do not present themselves as a LPC or as performing professional counseling. Based on the completed sunrise questionnaire, it is uncertain whether CCCL intends particular types of counseling other than psychotherapy to be regulated, such as career counseling, rehabilitation counseling, school counseling, and college counseling.

2) How does a LPC acquire a specialty?

CCCL contends that LPCs specialize in a variety of counseling settings, including mental health centers, rehabilitation agencies, hospitals, K-12 schools, art and movement counseling centers, and career centers. The proposal is vague on how a LPC attains a specialty. CCCL states that "a professional counseling specialty is narrowly focused, requiring specific knowledge and training...."

3) Does the profession of counseling meet the threshold for licensure (the potential for serious injury or death, or severe financial harm)?

According to CCCL, "harm occurs in a variety of ways, from those individuals defrauded or misled by untrained, self-titled career counselors promising results, charging exorbitant fees and not delivering what has been promised, to children being molested by residential treatment facility counselors, to severely traumatized children, who could not be provided with necessary trauma resolution treatment because the identified provider of those services was not licensed eligible under current legislation." Furthermore, CCCL states that currently in California there are no established legal avenues through which consumers can seek recourse for incompetent, unethical or unprofessional practice in the area of mental health counseling, other than for marriage and family therapy or social work.

CCCL continues, "The Board of Behavioral Sciences is responsible for regulating and responding to consumer complaints regarding Marriage and Family Therapists, Licensed Clinical Social Workers and Educational Psychologists. However, this board does not regulate the practice of other counselors within the state, because these counselors, who work with a variety

of clients and issues in public and private community agencies, mental health agencies, private practice, all levels of schools and universities, hospitals, rehabilitation facilities, correctional facilities, and business and industry, are not recognized in legislation. Consumers seeking counseling services for issues that do not stem from marriage and family issues, have no way to differentiate qualified Professional Counselors from untrained and unscrupulous practitioners offering counseling services."

According to CCCL, it was the intent of the legislature to "protect the public from incompetent, unethical and unprofessional practitioners" (B&P Code 4980.34), when establishing the marriage, family and child counseling code. CCCL states, "It is through similar legislative action that the rest of the consumers will be protected."

- 4) Because licensure of LPCs would presumably only be required for those who practice psychotherapy outside of an exempt setting, how would harm be mitigated for consumers seeking service in an exempt setting?
- 5) What evidence is there that a greater number of LPCs would be willing to treat Medi-Cal patients or provide services in rural areas?
- 6) Why would California employers hire a licensed-eligible mental health professional before they would hire someone not license-eligible, if the former is more expensive?